

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 04-11807 MLW

\_\_\_\_\_  
NEW CINGULAR WIRELESS, PCS, LLC )  
and EASTERN TOWERS, LLC, )  
Plaintiffs, )  
v. )  
TOWN OF WAYLAND, MASSACHUSETTS, )  
BOARD OF APPEALS of the TOWN OF )  
WAYLAND and JAMES E. GRUMBACH, ERIC B. )  
GOLDBERG, STEVEN FUGARAZZO, LAWRENCE K. )  
GLICK, SUSAN KOFFMAN, SHAUNT SORIAN, )  
ADIA GENNIS, LINDA SEGAL, as they are members )  
and alternate members of the Board, )  
Defendants. )  
\_\_\_\_\_

**PLAINTIFFS' MOTION FOR AN ARGUMENT ON THE MERITS AND JUDGMENT  
IN THEIR FAVOR ON COUNT II (SUBSTANTIAL EVIDENCE)**

Pursuant to Fed. R. Civ. P. 42 (b), AT&T Wireless PCS, LLC, now known as New Cingular Wireless, PCS, LLC, ("AT&T Wireless") and Eastern Towers, LLC ("Eastern") seek a hearing (i.e. arguments of counsel based upon the certified record) on the merits of Count II (Substantial Evidence). They also move for judgment in their favor ordering the Town of Wayland ("Town") to grant the necessary zoning permits for a communications installation at 137 Boston Post Road, Wayland, Massachusetts (the "Site") under Section 704 of the Telecommunications Act of 1996, Pub. L. No. 104-104 ("the Telecommunications Act"), codified at 47 U.S.C. § 332(c).

In support of this motion, AT&T Wireless and Eastern rely upon the certified administrative record (cited as "A") filed by the Town on April 1, 2005 and the accompanying Memorandum In Support of Plaintiffs' Motion for Judgment on the Merits of Count II (Substantial Evidence).

With the certified record before the Court, the case is therefore ripe for resolution on the substantial evidence point. Resolution of Count II at this time is consistent with Congress' direction that the reviewing court hear and decide the case "on an expedited basis." National Tower v. Plainville Board of Appeals, 297 F.3d 14, 20 (1<sup>st</sup> Cir. 2002), quoting 47 U.S.C. §332(c)(7)(B)(ii), (v). See Nextel Communications, Inc. v. Manchester-by-the-Sea, 115 F.Supp. 2d 65, 71-72 (D. Mass. 2000).

By its attorneys,

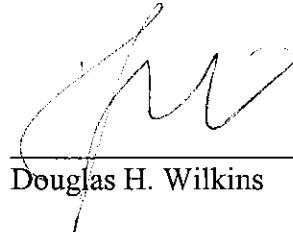
Stephen D. Anderson, Esq. (BBO # 018700)  
Douglas H. Wilkins, Esq. (BBO # 528000)  
Brian S. Grossman, Esq. (BBO # 64159)  
ANDERSON & KREIGER LLP  
43 Thorndike Street  
Cambridge, MA 02141  
(617) 252-6575

Dated: April 15, 2005

**CERTIFICATE OF SERVICE**

I certify that I served a copy of the foregoing on the defendants by causing a copy to be mailed to their counsel of record listed below on this 15th day of April, 2005.

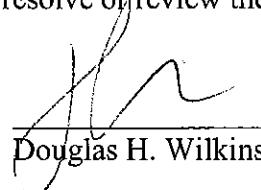
Patricia A. Cantor, BBO#072380  
Kopelman & Paige LLC  
31 St. James Avenue, 7<sup>th</sup> Floor  
Boston MA 02116-4102



Douglas H. Wilkins

**CERTIFICATE OF CONFERRAL**

Pursuant to Local Rule 7.1(a)(2), I certify that I conferred by phone with Patricia Cantor on April 12, 2005 in a good faith attempt to resolve or review the issues raised in this Motion.



Douglas H. Wilkins

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